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May 6, 2016

By ECF

The Honorable Brian M. Cogan
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Motions to Unseal* (ECF Nos. 156 and 164)
12-MC-557 (BMC)

Dear Judge Cogan:

We represent Jody Kriss, Respondent to the Order to Show Cause filed by John Doe, Movant in the above-referenced matter (ECF No. 123). We offer this submission in response to the Court's May 5, 2016 order stating that any party wishing to submit a response to the Government's submission in connection with the motions to unseal of intervenors Associated Press and Brian Vodicka (ECF Nos. 156 and 164) may do so by May 6, 2016.

The Government has not taken a position with respect to the Court's January 8, 2016 Memorandum and Order (ECF Docket No. 152) which denied John Doe's motion seeking orders holding Mr. Kriss in both civil and criminal contempt ("ECF No. 152"). The motion also sought a referral by the Court to the U.S. Attorneys' Office. Mr. Kriss believes that there is no basis for keeping Document 152 sealed and requests that the Court order it to be unsealed.

Mr. Kriss believes there are numerous reasons supporting ECF No. 152's unsealing. First, ECF No. 152 consists primarily of the procedural history of the proceedings before Your Honor and recitation of case law concerning civil and criminal contempt. It also discusses whether Mr. Kriss had violated any of the orders issued by Your Honor, Judge Glasser and the Second Circuit. Although ECF No. 152 discusses Kriss' possession of John Doe's PSR, it does not discuss the contents of that sealed document. Thus there is absolutely no basis to conclude that the law enforcement privilege attaches to ECF No. 152. ECF No. 152 does not disclose any law enforcement techniques or procedures, or the identity of law enforcement sources, witnesses or law enforcement personnel. Not surprisingly, therefore, the Government has not asked the Court to keep ECF No. 152 sealed.

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Furthermore, ECF No. 152 constitutes a “judicial document”. Therefore the common law and First Amendment rights of access, outlined in the Associated Press’ brief (ECF No. 156), fully apply to the Court’s Memorandum and Order.

Finally, as set forth in greater detail in two letters previously submitted to the Court, Movant John Doe and his counsel have utilized this proceeding, and the motions he made against Mr. Kriss, to support misrepresentations he made to the Supreme Court of New York, New York County, and the Appellate Division, First Department, of the Supreme Court of New York. (*See* ECF No. 144 (New York Supreme Court) and ECF No. 170 (First Department)). Mr. Kriss submits that the only way to prevent John Doe and his counsel from continuing to misrepresent the nature and status of this proceeding with respect to Mr. Kriss is for Your Honor’s decision unequivocally rejecting John Doe’s meritless contempt motions against him to be made public.

Respectfully submitted,

/s/

Bradley D. Simon

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Attorney for Respondent

Jody L. Kriss